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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Social Service Agency of the Protestant Church in Germany, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Latest Developments of Crucial Human Rights Situations in India*

I. The Armed Forces (Special Powers) Act (AFSPA) is to be repealed in North Eastern States of India as well as in Jammu and Kashmir.

(1) States are obliged to ensure that all counter-terrorism measures comply with international human rights standards. India has a long history of operating under the Armed Forces (Special Powers) Act of 1958 (AFSPA), established for the Northeast of India in 1958 in order to grant special powers to the Armed Forces in relation to so called "disturbed areas". AFSPA has received fundamental criticism for its adverse impacts on human rights. A number of UN human rights institutions had expressed their concerns on issues such as arbitrary killings, torture, cruel, inhuman and degrading treatment, enforced disappearance, arbitrary deprivation of life, collective punishment, violations of non-derogable process rights or discrimination committed under AFSPA.[1] There is a widespread reign of impunity and a principal denial of victim's rights.[2] Until today, people are killed by State forces and non-state armed forces in Manipur.[3] It is worth remembering that between 2000 and 2014, 548 bombs were detonated in different parts of Manipur state. A number of these bomb blasts coincided time-wise with the decision making process by the government on whether to extend AFSPA in the 'disturbed areas'. The last extension was issued in December 2014 to Manipur, Tripura, Assam, Arunachal Pradesh and others.

(2) Several Commissions constituted by the Government of India urged to repeal AFSPA. Conversely, the Government of India decided not to accept these recommendations made by its domestic institutions. Only due to civil society's commitment was the debate on the human rights violations in the framework of AFSPA brought before the Supreme Court and several lower courts, and also extended to the Indian Parliament. During Winter Session of Indian Parliament (2014/2015), in both Lok Sabha (Lower House) and Rayja Sabha (Upper House), members raised the issue and asked to repeal AFSPA.[4] The Union Home Minister, Mr. Kiran Rijeju, responded that the government would look into the recommendations by the so-called Jeevan Reddy Commission (2005), although there is not much expectation that the government will really deal with the subject. Furthermore, 15 Members of Parliaments from eight states in the North East responded on 3rd of December 2014 to a meeting with civil society stakeholders and affirmed their support for the appeal to repeal AFSPA.

(3) The United NGO-Mission of Manipur (UNMM) therefore requests the UN Human Rights Council to:

- urge the Government of India to finally take a decision at the level of Cabinet Sub-Committee on Security on AFSPA, and to consider the public concern in the decision making process, not only the advice from military side;
- stress the deadlines set by CERD in its recommendations of 2013 and CEDAW in 2014 for dealing with AFSPA;
- encourage the Indian parliament to form a parliamentary committee to look into several reports on that matter, such as of Jeevan Reddy, Second Administrative Reform Committee, Verma Commission and the recommendations by several UN Committees to repeal AFSPA;

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[1] A list can be provided upon request.

[2] Enshrined in the UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985 (UNGA resolution 40/34) and further provisions such as UNGA resolution (60/147) on "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" adopted in December 2005.

[3] In September and October 2014, seven persons, including two women, were killed.

[4] For instance by the Indian National Congress party, or the Janata Dal (U) party.

- to communicate with CERD in order to consider and re-establish its urgent action and early warning procedure;

- invite Special Procedures to follow up on their recommendations made to repeal AFSPA and to support legal investigations; such as those of the Special Rapporteur on Human Rights Defenders, the Special Rapporteur of Extrajudicial Execution,[5] the Special Rapporteur on Violence Against Women, its Causes and Consequences[6].

II. Systematic Harassment and Deprivation of Basic Legal Provisions

(4) In November 2000, Ms. Irom Chanu Sharmila went on hunger strike. On 19th of August 2014, the Session Judge of the High Court of Manipur ordered the release of Ms. Sharmila on the basis that she is protesting against AFSPA, and that this form of protest (hunger strike) is not contrary to Art. 309 of the Indian Penal Code, i.e. attempt to commit suicide. However, on Friday, 22nd of August, she was re-arrested by the Indian police referring again to Art. 309. This denial of legal guarantees has happened again and again. It is noteworthy, that Mr. Ghulam Nabi Azad of the State of Andhra Pradesh went on hunger strike for 2 days in 2013 when afterwards the Indian Parliament granted the formation of the new Telangana state. On 22nd of January 2015, the High Court ordered again the release of Ms. Sharmila, regarding the charge of "attempt of suicide" as baseless. Again, she was re-arrested. There are good reasons to conclude that AFSPA detrimentally affects human rights defenders and systematically denies legal forms of protest.

(5) The UNMM requests the UN Human Rights Council:

- to invite the Special Rapporteur on Violence Against Women to urge India to implement the court orders of 19th August 2014 and 22nd January 2015 and, thus, to release Ms. Irom Chanu Sharmila.

III. Ethnic and Social Related Disturbance in Assam

(6) On 23rd December 2014, 81 Adivasi (Members of Scheduled Tribes) were killed in the State of Assam, including women and children, mostly belonging to Christian communities. The Government of India suspects an armed group of committing the massacre while victims highlighted an ambiguous role of the Indian Army.[7] There are further sources saying that the Government of India had informed the Government of Assam beforehand about the possibility of such a massacre, and that the Indian Army was already deployed.[8] The question therefore is why the attack was not prevented. The same day, the Indian police even killed three protestors related to the massacre. Is it a mere incident that on the 3rd of January 2015, the Government of India announced that AFSPA is to be extended for another year in Assam?

(7) The UNMM requests the UN Human Rights Council:

- to invite the Special Rapporteurs on the Rights of Indigenous Peoples as well as on Freedom of Religion or Belief to report on the role of the Indian security forces in failing to protect the lives of the Adivasi. The two Special Rapporteurs may further contribute to appoint an Independent Investigation Team investigating the massacre and to involve the expertise of the Special Rapporteurs.

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[5] On cases such as the extrajudicial execution of Md. Azad Khan (killed in a fake encounter by a combined force on March 4, 2009) and Thangjam Manorama (killed by 17th Assam Rifles in July 11, 2004) whose cases are pending in Supreme Court of India since 2013.

[6] On cases such as rape and murder of Miss Nandeibam Sangita aged of 17 (raped by three personnel of 12 Granadier Riffles on 4th October 2003 and committed suicide on 4th October 2003, Jiribam- Imphal East District), Thangjam Manorama, 2004 (raped and murdered by 17th Assam Rifles), Chanu Rose of Ngaprum Khullen village, Ukhrul (raped by Major Pundir and Captain Nag of 95th BSF on March 4, 1974 and committed suicide on 6th March 1974), Miss Lansophy Tangvah (23 yrs) D/o W. Tangvah of Nungbi Khullen Village, Ukhrul District, Manipur and her aunt AS Dinah, former President of Tangkhul Shanao Long of Ukhrul killed in a bomb blast on 17th September 2014.

[7] See report in the News Life TV Channel of Assam at 7:30 pm on 25th of December 2014.

[8] See statements in the newspaper Assam Tribune of December 25, 2014.

IV. The Legacy of Killing and Disappearance Under AFSPA

(8) On 25 December 2014, eight human skulls and skeletal remains along with other human artifacts were found at the compound of the former Tombisana High School in Imphal (Manipur), about 200 meters west of the Kangla Fort. The Fort served as an Indian military garrison from 1949 to 2005, including for paramilitary forces engaged in counter-insurgency operations, and known for rigorous detention and interrogation, torture and extrajudicial executions of those believed to be involved in struggle for self-determination. Especially families who deplore the disappearance of family members raised the question of whether the Indian Army and paramilitary units might have perpetrated the crimes. There is reason to conclude that a systematic pattern of extrajudicial, summary or arbitrary executions is carried out by Indian security forces in Manipur under AFSPA.

(9) The Anthropology Department of Manipur University estimates that the skeletal remains are between 17 and 40 years old, a timeframe which coincides with high levels of enforced disappearances in Manipur. Human rights organizations speak about 22 cases of enforced disappearances between 1980 –2011 while many more are expected. No action has been taken so far by any State institution in terms of a forensic investigation. The Families of the Involuntarily Disappeared's Association, Manipur (FIDAM) requested the Chief Minister of Manipur to halt the construction work at Tombisana School and to establish an independent inquiry.[9] While the Chief Minister did not take such action, public pressure made the State government hand over the investigation to the Central Bureau of Investigation (CBI),[10] known to be part of the political patronage. The families wish to have fair, impartial and transparent investigations with international forensic, anthropological and archaeological expertise. Unfortunately, the Manipur High Court withdrew such petition arguing that the government had handed over the investigation to the CBI, while in fact the State government had not issued any formal notification of the cabinet decision, nor had they informed the CBI or Government of India after nine full days of such decision.

(10) The UNMM requests the UN Human Rights Council to:

- invite the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Working Group on Enforced or Involuntary Disappearances to approach the Government of India requesting fair, impartial and transparent investigations with international forensic, anthropological and archaeological expertise, and to remind the State Government of Manipur of its duties in accordance with Indian law.

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*United NGO-Mission of Manipur, an NGO without consultative status, also shares the views expressed in this statement.

[9] Memorandum of 27th of December 2014.
[10] At 29th of December 2014.